

DETAILED ACTION

1. All outstanding objections and rejections made in the previous Office Action, and not repeated below, are hereby withdrawn.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior office action.
3. No new grounds of rejection are set forth below. Thus, the following action is properly made final.

Claim Rejections - 35 USC § 103

4. Claims 22-26, 28-32, 34 and 39-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,262,152 (herein "Fryd") in view of WO 02/082900 (herein Crooks).
5. The rejection is adequately set forth in paragraphs 16-21 of the Office Action mailed 10/22/11 and is incorporated here by reference.
6. *The amendments to claims 32 and 43 are noted, however the previously set forth rejections cited above stand proper over the amended claims. Note that claim 43 was treated as depending on claim 22 (as currently amended).*

7. Claims 27 and 35-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,262,152 (herein "Fryd") in view of WO 02/082900 (herein Crooks) and Jankova et al. Macromolecules, 1998, 31, 538-541 (herein "Jankova").
8. The rejection is adequately set forth in paragraphs 22-25 of the Office Action mailed 10/22/11 and is incorporated here by reference.

Response to Arguments

9. Applicant's arguments filed 1/24/11 have been fully considered but they are not persuasive.

- *Applicant argues that Fryd is silent on the ratio of polymer to solid.*

10. The examiner acknowledges that the prior art is silent to the specific ratio, however, as stated in the prior art rejections above, Fryd teaches the amount of particle (solid) "is not critical to the invention and can be as desired for the end use application" (3:28-35). Furthermore, Fryd teaches that the polymeric dispersant (polymer) is used to control the dispersability of the solid (3:36-45). Moreover, Fryd in view of Crooks teaches the claimed invention, since Crooks gives motivations for lowering the polymer to below 1:5. Thus, the polymer and solid are result effective variables, and "discovery of an optimum value of a result effective variable in a known process is ordinarily within the skill of the art." See *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). Also see MPEP 2144.05.

- *Applicant argues that Fryd is directed towards particle dispersions, while Crooks is directed towards aqueous suspensions.*

11. The examiner disagrees that Fryd and Crooks are in different fields. Both are directed towards aqueous suspensions. See abstract of Crook and abstract of Fryd. Specific attention is directed towards col. 1, line 10-45 of Fryd, which discloses that the particle dispersions are aqueous and the particles are suspended, thus aqueous suspensions. Note that the nanoparticles of Crooks are agrochemicals. See examples. In response to applicant's argument that Crooks and/or Fryd are nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, both Fryd and Crooks is directed towards agrochemicals that form aqueous suspensions via the use of an amphiphilic compound.

12.

- *Applicant argues that Fryd is directed towards paints inks and coatings, while crooks is directed towards agrochemicals.*

13. In response, the examiner disagrees. Fryd is directed towards agrochemicals. See col. 3, lines 28-35. Also note that Fryd teaches amphiphilic compounds (stabilizers). See abstract and examples. Thus both Fryd and Crooks is directed

towards agrochemicals that form aqueous suspensions via the use of an amphiphilic compound.

14. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

- *Applicant argues that there is no motivation to look towards Crooks.*

15. In response, the examiner disagrees. Crooks teaches ranges of components that fall within the claimed ranges and Crooks teaches that these ranges are advantageous at reducing the cost of the suspensions, since, presumably, more active ingredient (agrochemical) is used at the expense of less in-active ingredient (amphiphilic compound).

- *Applicant argues that Crooks teaches away from the claimed invention.*

16. In response, the examiner disagrees. However, as noted above, both Fryd and Crooks is directed towards agrochemicals that form aqueous suspensions via the use of

an amphiphilic compound. Moreover, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Conclusion

17. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARK S. KAUCHER whose telephone number is (571) 270-7340. The examiner can normally be reached on Monday to Thursday, 8:00 AM to 7:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasudevan S. Jagannathan can be reached on (571) 272-1119. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/MARK S KAUCHER/
Examiner, Art Unit 1764

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